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<b>Applicability:</b>	<b>All DDSN State Employees</b>

The language in this policy does not create an employment contract between the employee and the Department of Disabilities and Special Needs (SCDDSN). SCDDSN reserves the right to revise the contents of this policy, in whole or in part.

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## **I. PURPOSE:**

On February 19, 1985, the Supreme Court ruled in Garcia vs. San Antonio Metropolitan Transit Authority that the Fair Labor Standards Act (FLSA) was applicable to all state and local government personnel unless such person or persons are specifically exempt from certain or all provisions of the Act. The purpose of this directive is to update the departmental policies relative to FLSA to ensure compliance with the Act.

## **II. EXEMPTION STATUS FOR OVERTIME PAYMENT**

The Human Resource Management Division (H.R.M.) is responsible for FLSA interpretation and determination of exemption classifications for all positions of the South Carolina Department of Disabilities and Special Needs (DDSN). The classification for each position is determined by the FLSA exemption status of that position.

There are two (2) categories of employment related to overtime: (1) exempt and (2) non-exempt. Exempt employees are those employees employed in a bonafide executive, administrative or professional capacity and meet certain tests contained in the FLSA. These employees are not to be paid overtime. Non-exempt employees are defined as any employee employed in a capacity other than those listed above. These employees are eligible to be paid overtime.

The exemption status of each employee is recorded in the H.R.M. Office and shall be reflected in the remarks section on the SCDDSN Request for Personnel Action Form (P-40).

### **III. WORKING HOURS**

Compensation of South Carolina State employees is based on 40 hours per week or 2080 per year.

SCDDSN shall determine the appropriate work schedule for each service based on the requirements of the workplace and scheduling considerations. SCDDSN has adopted a standard work week of forty (40) hours for all shift employees assigned to positions in areas requiring staff on duty twenty-four (24) hours a day. These hours are consistent with requirements of the Fair Labor Standards Act (FLSA) as explained in the Pay Plan section. Regional shift employees will work on an eighty (80) hour schedule consistent with FLSA approved schedules for residential facilities. Nursing personnel may be scheduled to work forty (40) hour schedules with work days up to twelve (12) hours.

Non-shift employees may have a standard work week of thirty-seven and one-half (37) hours. A forty (40) hour work week may be authorized by the state director for non-shift workers as needed to meet mission requirements. Those employees will work on approved seven (7) day schedules consistent with the requirements of FLSA.

In direct care areas where employees work shifts and must report in prior to the beginning of the shift and/or remain for a short time after the shift ends to effect smooth transfer of duties to their replacements, a change-over period may be required. Individuals who are required to be present for a change-over period should be allowed free time during the shift so that their work hours do not exceed 8.00 hours per day; however, free time or break time must be carefully scheduled to ensure a living unit is not left understaffed.

Hours worked as defined by FLSA includes all the time an employee is required to be on duty or on the employer's premises, or at a prescribed workplace for the employer and all the time during which the employee is suffered or permitted to work for the employer. Specific applications of FLSA to non-exempt employees are as follows:

#### **A. Beginning and Ending Work**

Employees who are eligible for overtime compensation are not to begin work before the agreed upon start of shift and will not be permitted to work beyond the agreed upon end of shift. The only exemption to this policy would be where prior approval of departmental sanctioned overtime is available.

#### **B. Meal Period**

Administrative employees are allowed one (1) hour for lunch during the period 11:30 a.m. and 2:00 p.m.

Direct care employees may take an appropriate meal break during their shift provided another employee is covering their duties during this period. No employee will be allowed to eat from food carts or serving counters in dormitories. No free meals will be served except as follows and

when specifically authorized by the District Director or Facility Administrator.

Direct care employees accompanying persons receiving SCDDSN services on field trips may eat free. Meals must be consumed in the presence of those persons so as to provide training in the social graces.

A bonafide meal period is not hours worked if the employee is completely relieved from duty for the purpose of eating a regular meal. The employee must be free to leave his or her duty post. However, there is no requirement that the employee be allowed to leave the premises or work site. When the meal period is uninterrupted except for rare and infrequent emergency calls, the meal period can be excluded from working time.

#### C. On Call/Call Back

An employee who is required to remain "on call" on the employer's premises or so close thereto that he/she cannot use the time effectively for his/her own purpose is working while "on call". An employee who is not required to remain on the employer's premises but is merely required to leave word at home or with SCDDSN where he/she might be reached is not working while "on call". The South Carolina Department of Disabilities and Special Needs does not sanction "on call" pay. In all cases where the employee is called back to the facility they shall be credited with a minimum of two (2) hours work time, excluding authorized travel time, even if services rendered require less than two (2) hours. An employee shall not be credited nor paid for call back time if (a) the recall to work (call back) has been canceled or (b) the employee refuses to accept work that is offered upon reporting to work.

#### D. Compensatory Time

Compensatory time may not be used by shift employees in lieu of payment of overtime even if agreed to or requested by the employee.

Non-shift, non-exempt employees may be granted compensatory time off for all hours actually worked over forty (40) in the seven (7) day work period if such compensatory time off can be taken during the same pay period that the overtime was accrued. Compensatory time will be taken at one and one-half (1 1/2) hours for each hour of overtime actually worked.

#### E. Travel Time

In an emergency situation, "travel time" may be considered working time. If an employee who has gone home after completing assigned work hours is subsequently called out at night to travel a substantial distance (15 miles or more one way) to perform an emergency job required by the employer, then all time spent in such travel is working time.

#### F. Overnight Travel

Overnight travel in the company of an individual served is considered working time and must be compensated. Time spent on overnight trips that involve sleeping, eating or traveling as a passenger on an airplane, train, boat or automobile is not considered working and does not have

to be compensated provided the employee is not in the company of an individual served unless the travel cuts across the employee's regularly scheduled workday. However, employees who make overnight trips of 24 hours or longer for the purpose of transporting individuals served will be paid for all actual time spent on the trip except that eight (8) hours per day will be deducted for sleeping time provided that (1) the employer and employee agree to the exclusion for sleep time, (2) adequate sleeping facilities are furnished, (3) the employee can usually enjoy an uninterrupted night's sleep, (4) not more than 8 hours may be excluded for sleep. Unless an employee gets a minimum of 5 hours sleep, all hours during sleep shall be credited as hours worked. Additional time spent on trips which is utilized for personal reasons will not be compensated and must be approved in advance (e.g. lunch break when relieved of responsibility of an individual served).

#### G. Lectures, Meetings and Training

Lectures, meetings and training programs of an involuntary nature, that are required by the employer are considered working time and must be compensated.

#### H. Volunteer Service

Employees may volunteer to provide service to individuals served and the Department outside the normal description of their job. If such volunteer service is part of their normal duties, said service shall not be permitted unless previously approved as additional time worked.

#### I. Employment in Other State Agencies

The US Department of Labor considers the work performed in two state agencies as having been done for one employer, the State of South Carolina. Therefore, if non-exempt work is involved, the accumulation of non-exempt work in both employed agencies must be considered in overtime/compensatory credit calculations. Employment of non-exempt workers in other state agencies should not be approved unless the hourly rate is at least one and one-half (1) times the normal hourly rate.

### **IV. COMPENSATION AND OVERTIME**

By virtue of the South Carolina Department of Disabilities and Special Needs' role of providing services through residential care facilities, shift employees are covered under the special overtime pay provision for hospital employees. This provision is commonly called the eight and eighty rule.

#### A. Compensation of Overtime

Non-exempt shift employees will be paid no less than one and one-half (1 1/2) their normal rate of pay for all hours actually worked over eight (8) in any work day and over eighty (80) in the

fourteen (14) day work period as a whole. Any hours not worked during the fourteen (14) day period including holidays, authorized paid leave or leave without pay are not considered hours worked for the computation of overtime.

Non-shift employees who are classified as non-exempt under the FLSA will be paid no less than one and one-half (1 1/2) their normal rate of pay for all hours actually worked over forty (40) in any seven (7) day period unless compensatory time off can be taken during the same pay period that the overtime was accrued. Compensatory time will be taken at one and one-half (1 1/2) hours for each hour of overtime actually worked. Any hours not worked during the seven (7) day work period including holidays, authorized paid leave or leave without pay are not considered hours worked for the computation of over-time. Compensation or compensatory time off is not authorized for hours worked between thirty seven and one-half (37 1/2) and forty (40) hours.

#### **B. Shift Differential**

Shift differential will be computed as part of the normal hourly rate when determining rate on which overtime will be paid.

#### **C. Approval of Overtime**

Overtime shall be allowed only in emergency situations and must be approved in advance by the Deputy State Director, Regional Director/Facility Director, Program Administrator, Nursing Administrator or appropriate Officer of the Day unless the emergency is of such immediate nature that the individual served safety or well being is involved. Overtime should not be relied upon as a means to cover the basic direct care schedule. However, it may be used to provide minimum coverage as a result of unusual absenteeism or temporary one-to-one supervision when other solutions are not available. Immediate emergency requests should be submitted for approval to the Facility Director, Program Administrator, Nursing Administrator or Officer of the Day within seventy-two (72) hours of the occurrence. This authority shall not be further delegated. No overtime should be approved for less than thirty (30) minutes or in excess of sixteen (16) hours per day or forty (40) hours per fourteen (14) day period per eligible employee.

SCDDSN Form P-77, Request for Overtime Pay, must be completed for all overtime worked and signed by the appropriate official prior to entry into the payroll system. Appropriate edits are included in the PSS leave/overtime module to ensure that no employee works more than 16 overtime hours per day or 40 hours per overtime period. Temporary employees shall not be authorized or permitted to work overtime

### **V. MINIMUM WAGE**

The South Carolina Department of Disabilities and Special Needs are subject to the minimum wage provisions of the FLSA. SCDDSN employees are compensated in accordance with the South Carolina State Compensation Plan which complies with the minimum wage requirements.

## **VI. RECORDS**

Certain records must be kept under FLSA. These records shall be preserved for a period of no less than three (3) years.

### **A. Identification**

1. Employee's full name and social security number
2. Home address, including zip
3. Date of birth, if eighteen (18) years of age or younger
4. Sex and occupation

### **B. Hours**

1. Time of day and day of week when employee's work week begins
2. Hours worked each day
3. Total hours worked each week

### **C. Wages**

1. Basis on which wages are paid (hourly rate, weekly rate, etc.)
2. Regular hourly pay rate for any week when overtime is worked
3. Nature and amount of each payment excluded from regular rate
4. Total daily or weekly straight time pay
5. Total overtime pay for work period
6. All additions or deletions affecting wage for each pay period
7. Total pay each pay period
8. Date of payment and the pay period covered by the payment

### **D. Compensatory Time**

1. Number of hours of compensatory time earned each pay period for each employee.
2. Number of hours of compensatory time actually used by each employee.
3. Number of hours of compensatory time compensated in cash, the total amount paid and the date of each payment.

### **E. Sign-In/Out Documents**

All areas with employees working overtime are required to maintain appropriate sign-in/out documents to reflect actual overtime hours worked including start time, lunch/dinner break and ending time of scheduled overtime. These documents should be retained for at least three years and then destroyed.

#### F. Responsibility

The Director of Human Resource Management and Regional Directors/ Facility Directors shall ensure that records are retained as required by FLSA.

#### **VII. FAIR LABOR STANDARDS ACT POSTER**

The FLSA requires that the poster "Notice to Employees" be posted on bulletin boards where notices of general interest are posted. Supervisors of the various organizational components are responsible for assurance that posters remain posted and visible.

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Wayne D. Blanton  
Director, Human Resources and Legal  
Services  
(Originator)

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Stanley J. Butkus, Ph.D.  
State Director  
(Approved)